

110TH CONGRESS  
2D SESSION

# **S. 3295**

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IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2008

Referred to the Committee on the Judiciary

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## **AN ACT**

To amend title 35, United States Code, and the Trademark Act of 1946 to provide that the Secretary of Commerce, in consultation with the Director of the United States Patent and Trademark Office, shall appoint administrative patent judges and administrative trademark judges, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. APPOINTMENT OF ADMINISTRATIVE PATENT**  
 4 **JUDGES AND ADMINISTRATIVE TRADEMARK**  
 5 **JUDGES.**

6 (a) ADMINISTRATIVE PATENT JUDGES.—Section 6 of  
 7 title 35, United States Code, is amended—

8 (1) in subsection (a)—

9 (A) in the second sentence, by striking  
 10 “Deputy Commissioner” and inserting “Deputy  
 11 Director”; and

12 (B) in the last sentence, by striking “Di-  
 13 rector” and inserting “Secretary of Commerce,  
 14 in consultation with the Director”; and

15 (C) by adding at the end the following:

16 “(c) AUTHORITY OF THE SECRETARY.—The Sec-  
 17 retary of Commerce may, in his or her discretion, deem  
 18 the appointment of an administrative patent judge who,  
 19 before the date of the enactment of this subsection, held  
 20 office pursuant to an appointment by the Director to take  
 21 effect on the date on which the Director initially appointed  
 22 the administrative patent judge.

23 “(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—  
 24 It shall be a defense to a challenge to the appointment  
 25 of an administrative patent judge on the basis of the

1 judge's having been originally appointed by the Director  
2 that the administrative patent judge so appointed was act-  
3 ing as a de facto officer.”.

4 (b) ADMINISTRATIVE TRADEMARK JUDGES.—Section  
5 17 of the Act entitled “An Act to provide for the registra-  
6 tion and protection of trademarks used in commerce, to  
7 carry out the provisions of certain international conven-  
8 tions, and for other purposes”, approved July 5, 1946  
9 (commonly referred to as the “Trademark Act of 1946”;  
10 15 U.S.C. 1067), is amended—

11 (1) in subsection (b)—

12 (A) by inserting “Deputy Director of the  
13 United States Patent and Trademark Office”,  
14 after “Director,”; and

15 (B) by striking “appointed by the Direc-  
16 tor” and inserting “appointed by the Secretary  
17 of Commerce, in consultation with the Direc-  
18 tor”; and

19 (2) by adding at the end the following:

20 “(c) AUTHORITY OF THE SECRETARY.—The Sec-  
21 retary of Commerce may, in his or her discretion, deem  
22 the appointment of an administrative trademark judge  
23 who, before the date of the enactment of this subsection,  
24 held office pursuant to an appointment by the Director

1 to take effect on the date on which the Director initially  
2 appointed the administrative trademark judge.

3 “(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—  
4 It shall be a defense to a challenge to the appointment  
5 of an administrative trademark judge on the basis of the  
6 judge’s having been originally appointed by the Director  
7 that the administrative trademark judge so appointed was  
8 acting as a de facto officer.”.

Passed the Senate July 22, 2008.

Attest: NANCY ERICKSON,  
*Secretary.*